



STATE OF TEXAS  
TEXAS BUILDING AND PROCUREMENT COMMISSION  
**General Instructions, Terms and Conditions**  
Revised February 2006  
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STATE OF TEXAS  
TEXAS BUILDING AND PROCUREMENT COMMISSION  
**GENERAL INSTRUCTIONS, TERMS AND CONDITIONS  
FOR TERM CONTRACTS AND SCHEDULED CONTRACTS**

**Revised February 2006**

Please read the following information carefully. Any exceptions to these terms and conditions may be cause for a response to be disqualified. Also read the Special Instructions contained in each solicitation. In the event of a conflict, the Special Instructions in the solicitation will take precedence over the General Instructions, Terms and Conditions. All responses become part of the procurement files and are available for public inspection.

**I. TYPES OF CONTRACTS:** Each solicitation will identify the type of contract advertised.

A. **Automated Firm Price**: Prices bid are firm for the period specified in the solicitation and all renewal terms. Price decreases are allowed at any time.

B. **Automated Firm Price with Escalation**: Prices bid may be increased according to the terms listed in the solicitation.

1. Based on Consumer Price Index, Producers Price Index, or any other index.

The vendor must submit a written request for price increases to the Texas Building and Procurement Commission (TBPC) by the date indicated in the Special Instructions. **Note: Vendors shall not delay or stop deliveries pending price change approval.** Price increase requests shall be supported by the appropriate index documentation from an independent and industry accepted market report.

A price increase from your supplier alone is not sufficient documentation. The TBPC will respond within 15 calendar days of the request receipt date by 1) granting the request; 2) reassigning the item(s) to another awarded vendor; 3) re-bidding the item(s); or taking any other action deemed in the best interest of the state. Price decreases will be accepted at any time during the contract period.

The allowable percent change shall be calculated as follows:

$$\frac{B-A}{A} \times 100\% = \text{Percent of allowable price increase}$$

A = Index from the month of the original IFB or the month of the last approved price increase

B = Current and/or latest baseline index

The resulting percent shall be rounded to the nearest one-hundredth of one percent and shall be the maximum adjustment permitted. The Consumer Price Index (CPI) or Producer Price Index (PPI) used will be for the industry of the specific items listed in the Invitation for Bid (IFB). At the sole discretion of the state, multiple CPI's or PPI's may be used for various items in the same IFB.

2. Based on Percentage of Original Bid Price.

When requested in the solicitation, vendor will provide the percent of increase for the increase period(s) as specified in the Special Instructions. The state will set the maximum allowable increase in the Special Instructions.

C. **Automated Discount-From-List**: Prices bid may be increased during the term of this type of contract based upon changes in an approved price list or other approved method as identified in the solicitation. **IMPORTANT: Price lists should be included in the bid or response file prior to award; otherwise, an award may be made only at a firm fixed price for the duration of the contract and all renewal terms.**

1. Clarification of Price List/Catalog:

- a. This type of contract provides for discounts from a current manufacturer's distributor or producer's type price list/catalog **OR** a percentage add-on to a manufacturer's distributor or producer's type

price list/catalog. Current price list means the latest price list in effect between the "date mailed" as shown on the solicitation and the bid opening or response due date. Manufacturer's price list means a price list published in some form by the manufacturer of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable. The TBPC shall be the sole determinate as to acceptability.

- b. Dated manufacturer's distributor or producer's type price list/catalog or industry accepted documentation showing the current pricing and the initial pricing structure must be included in the solicitation file. Accepted documentation could include mill notification letters, invoices, and copies of general announcements from the manufacturer showing the transaction prices dated prior to the bid opening or response due date. These announcements must apply to all government customers or customers of a similar volume and not apply only to the solicitation for the state of Texas.
2. Requests for price increases must be documented with a new dated price and/or cost list which is the same type as the original submission. The maximum allowable increase will be determined by the following formula:

$$\frac{\text{Original Bid Price}}{\text{Original Mfg. Cost/Price List}} \times \text{New Mfg. Cost/ Price List} = \text{Max. Allowable Contract Price}$$

3. Prices for this type of contract cannot be increased for 90 calendar days after the contract begins unless otherwise specified in the solicitation. Price reductions shall be offered immediately upon becoming available to a vendor at any time after award.
  4. When discount-from-list bids are requested, firm price bids (price protected with no price increase) will be accepted only if bidder agrees to pass on to the State any price decreases as they occur.
  5. **NOTE:** If a bidder fails to submit a price or cost list or submits a price or cost list which fails to meet the requirements of the solicitation, the solicitation may still be considered. However, the vendor **shall not** be entitled to any price increases during the term of the contract and all renewal periods if an award is made.
- D. **Non-Automated Discount-From-List:** This type of contract provides for discounts from a current manufacturer's price list or catalog **OR** a percentage add-on to a manufacturer's distributor or producer's type price list/catalog. Current price list means the latest price list in effect between the "date mailed" as shown on the solicitation and the bid opening or response due date. Manufacturer's price list means a price list published in some form by the manufacturer of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable. The TBPC shall be the sole determinate as to acceptability. The following conditions apply:

1. One copy of the price list and/or catalog is required to be submitted with the solicitation or prior to award, but must be included in the solicitation file prior to award.
2. A discount percentage must be indicated for all items offered on the price list/catalog. This percentage will be used for the term of the contract.
3. Bidder shall block out items on the price list and/or catalog which are not being offered. When a price list and/or catalog contains more than one price column, bidder **MUST** indicate which column applies to the solicitation; otherwise, the lowest price column will be used.
4. After award(s) are made, the vendor must furnish copies of current price lists and/or catalogs properly identified, edited and dated to each qualified ordering entity upon request.
5. Prices in this category cannot be increased for 90 calendar days after the contract begins unless otherwise specified in the solicitation. Price reductions will be accepted at any time after award has been made.

## **II. PRICE ADJUSTMENT SUBMISSION REQUIREMENTS:**

Price increase or discount change requests must be requested with a signed cover letter and accompanied by all required documentation listed in Section I, Type of Contracts, as related to each contract type.

### **A. Required Procedures:**

#### **1. Automated Firm Price with Escalation**

Vendors are required to provide price changes on the Notice of Award using a side by side format indicating new pricing, typewritten or in legible handwritten ink, next to the current unit price.

2. **Automated Discount-From-List Contract:**

Vendors are required to provide price changes on the Notice of Award using a side by side format indicating new pricing, typewritten or in legible handwritten ink, next to the current unit price.

3. **Non-Automated Discount-From-List Contract:**

Vendors are required to provide discount changes on a cover letter and include the following attachments.

- a. Provide cover letter indicating change in discount.
- b. Submit a copy of the new manufacturer's price lists/catalogs.
- c. Vendor must furnish copies of the new price lists/catalogs to the qualified ordering entities currently using this contract. This should be done immediately upon receipt of approval of the price increases by the TBPC.

3. **Other Price Adjustment Type Contracts:**

- a. The method of adjusting prices for other types of price adjustment contracts will be specified in the solicitation instructions.
- b. The index used as a basis for prices bid will also be identified in the solicitation.

B. **Acceptance of Price Increases:** The TBPC will accept or reject increases within 15 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the vendor may request cancellation of such items from the contract by giving the TBPC written notice. Cancellation will not go into effect for 15 calendar days after receipt of the written request. Old prices must be honored on orders dated up to the official date of TBPC cancellation.

C. **Price Decreases:** Vendors are required to implement immediately any price decreases that may become available. The TBPC must be notified in writing of any decreases for file updating purposes and notice to contract users.

D. **Most Favored Customer Pricing:** Bid prices offered to the state will be considered the bidder's most favored customer pricing. In the event a vendor offers or provides a decrease in prices to its customers for the same commodities or services, under the same terms and conditions, provided for the state of Texas pursuant to its contract, the vendor shall provide the same decrease in price for the state of Texas.

III. **GENERAL PROVISIONS:**

A. **Term of Contract and Purchase Order Dates:**

1. The solicitation shall state the term of the contract and any applicable renewal periods. Any awarded contract may be extended up to ninety (90) days during any given renewal period at the sole option of the state.
2. Purchase orders dated during the term of the contract must be honored even if received after the contract expiration date. Vendors may not specify a "final order" receipt date. Pricing is established by the date the purchase order is placed unless otherwise stated in the contract.
3. Confirmation orders will show the date the order is mailed but will also show the date the confirmation order was originally placed.

B. **Shipment Identification and Delivery:** Delivery requirements will be addressed in the Special Instructions contained in each solicitation. The following shall be applicable unless in conflict with the special instructions listed in the solicitation.

1. **Identification of Shipments:** In addition to the complete destination address, each package must be clearly marked with the TBPC purchase order number and requisition number as shown on the order. Each shipment must be accompanied by a packing slip.
2. **Packaging and Labeling:** All items shipped must be properly labeled showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information usually used by the vendor.
3. **Hours for Delivery:** Delivery shall be made during the normal working hours of the qualified ordering entity unless prior approval for after-hours delivery has been obtained from the qualified ordering entity.

C. **Proprietary or Confidential Information:** Responses may include proprietary or confidential information. TBPC will take reasonable precautions in protecting such information provided that it is clearly identified as

proprietary or confidential on the page on which it appears. Information, documentation and other material submitted by Vendors in response to the solicitation may be subject to public disclosure pursuant to Chapter 552, Texas Government Code, at web site <http://www.capitol.state.tx.us/statutes/gvtoc.html> chapters 552.110, 552.301, 552.3035, and 552.305. Vendors submitting documentation in response to this solicitation, believed to be confidential, must indicate so clearly on the document. In the event of a request for information pertaining to the solicitation, TBPC will comply with the provisions of the Public Information Act to protect the interests of the State.

- D. **Audit Clause:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract awards.
- E. **Continued Appropriations:** Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
- F. **Technology Access Clause:** The Vendor expressly acknowledges that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the qualified ordering entity that the technology provided to the qualified ordering entity for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

1. Providing equivalent access for effective use by both visual and non-visual means;
2. Presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and
3. Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays and customizable display appearance.

**Exemption Declaration:** Pursuant to the provisions of the Texas Government Code, Chapter 2157.005(d) this requirement is for the purchase of a wireless communication device to be used by peace officers, firefighters, and other emergency response personnel to respond to a public safety emergency. The provisions of the Technology Access Clause do not apply.

- G. **Inspection and Tests:** All goods are subject to inspection and testing by the State. Authorized TBPC personnel shall have access to a vendor's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by TBPC on request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may be, at the State's option, returned to the vendor at vendor's risk and expense or disposed of in accordance with TBPC rules or applicable statutes. The vendor may request that goods be held at vendor's risk for a reasonable period of time for later disposition at the vendor's expense. Latent defects may result in revocation of acceptance of any product.
- H. **Late Delivery:** If a delivery delay is foreseen, vendor shall give notice to the qualified ordering entity and the TBPC. The qualified ordering entity or the TBPC has the right to extend the delivery date if reasons appear valid. The vendor must keep the qualified ordering entity advised at all times of the status of the order. If the vendor has orders in their possession which have not been completed within the specified delivery time, the TBPC reserves the right to withhold issuance of further orders until all orders have been filled and acceptable assurance has been given that the event will not be repeated.
- I. **Back Orders:** Qualified ordering entities may purchase on the open market any commodity reported by a vendor to be on back order when the resultant delivery time is unsatisfactory. Damages may be applicable in cases of a pattern of back orders.
- J. **Damage Assessment:** If a vendor is in default on an order, the State reserves the right to purchase the item in default and charge the increase in price, if any, and cost of handling to the vendor. Failure to pay a

damage assessment is cause for contract cancellation and/or debarment or removal of the vendor from the State's Centralized Master Bidders List (CMBL).

- K. **Emergency Deliveries:** In case of an emergency experienced by a qualified ordering entity, the vendor is requested to supply the needed material immediately, if possible. If the vendor cannot respond, then the emergency requirement may be purchased on the open market. Such emergency purchases shall not be considered a breach of contract by the State or the vendor.
- L. **Substitutions:** All substitutions require prior written approval of the TBPC. The TBPC reserves the right to require the vendor to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are not automatically amended by an approved substitution. The vendor must contact the qualified ordering entity prior to shipment of the substituted goods.
- M. **Purchases Off Contract:** Under certain circumstances, the State permits state agencies to purchase commodities available through a contract on the open market. Such circumstances may be identified in the solicitation.
- N. **Supplemental Bids:** During the term of this contract, a supplemental bid(s) may be done with awards added to this contract for the remaining term or renewal(s).
- O. **Suspension & Debarment:** Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Bidder is in compliance with the State of Texas statutes and rules relating to procurement.
- P. **Excluded Parties List System:** Texas Building and Procurement Commission (TBPC) will adhere to the directions provided in Executive Order 13224 on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 09/24/2001 and any subsequent changes made to it via cross – referencing respondents / vendors with the Federal General Services Administration's **Excluded Parties List System** (EPLS) <http://www.epls.gov> which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) **Specially Designated National** (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: <http://www.whitehouse.gov/news/orders/>

#### **IV. PREPARATION OF BID:**

- A. **Geographical Area Bidding:** Solicitations may require pricing by zone, Texas Department of Transportation (TXDOT) highway district, Council of Governments (COG) area, or other defined geographical area. A bidder may bid any one or more geographical areas identified in the solicitation, but a bid submitted must be for an entire area. Any exception that requires bidding for the entire state will be stated in the solicitation. To obtain a copy of the zone map, go to the following Web site: <http://www.tbpc.state.tx.us/stpurch/zonemap.pdf>
- B. **Freight Charges & F.O.B. Point:** Quote all bids F.O.B. destination, transportation prepaid and allowed, i.e., included in the price bid, (sidewalk or dock delivery) unless special contract instructions direct or permit otherwise.
- C. **Bid Prices:** Bid prices must be firm for acceptance for 90 calendar days from bid opening date unless otherwise specified in the solicitation.
- D. **Taxes:** Purchases made from term contracts are exempt from state and city sales and most use taxes and Federal excise taxes. Items that are not exempt will be identified in the solicitation. Do not include exempted taxes in bid-response.
- E. **Usage Figures:** Quantities shown on the solicitation under the term "Usage" are estimated requirements based upon purchase orders issued for a prior period indicated in the solicitation. These figures are not to be construed as guaranteed purchases under the contract; however, the figures will be used as a factor for determining the award and bonding requirements. Qualified ordering entities will purchase all commodity requirements from contract vendors but only in such quantities as required.
- F. **Referenced Example:** Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under Texas Government Code, Title 10, Subtitle D, Section 2155.067. If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be included with the bid response. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- G. **Condition of Products:** All items bid shall be new, unused, of current production, and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the solicitation.

- H. **Warranty:** Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.
- I. **Unit of Measure:** If offering a bid price for a different unit of measure, the exception and proposed packaging must be included by the line item bid.
- J. **Alternate Bids:** Alternate or supplemental bids shall be submitted as a separate item and be identified by the bidder's name and signature and be cross-referenced to the applicable item in the solicitation.
- K. **Texas Specifications:** When a Texas Specification is referenced in the solicitation, a copy of the specification may be obtained from the TBPC web site at [http://www.tbpc.state.tx.us/spec\\_lib/numeric.html](http://www.tbpc.state.tx.us/spec_lib/numeric.html). Please retain the specification for future use.
- L. **Samples: DO NOT** send samples unless requested. Any samples submitted must be furnished at no cost to the State. If not destroyed in examination, samples will be returned to the bidder upon bidder's written request at bidder's expense. Samples submitted to verify specifications prior to making an award may be retained by TBPC for the duration of the contract for later comparison with items delivered. Each sample should be marked with bidder's name, address, bid opening date and solicitation number. Do not attach samples to bid pages.
- M. **Signature on Bid:** Bid must be manually signed or bid will be disqualified. The person signing the bid must have authority to bind the represented company to a contract. An unsigned bid cannot be signed after the bid opening time even though the bidder or a representative is present at the bid opening.
- N. **Attachments:** Bidders may include attachments to describe commodities being bid and/or to exhibit that products offered meet all written specifications; however, do not submit samples unless requested to do so. Each page of an attachment submitted with a bid must be identified by the contract class number as recorded on the first page of the solicitation and by the bid date and time of opening. The name of the company submitting the attachment must also be prominently displayed on each page of the attachment. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the bid in writing on this solicitation document. ***WARNING: Any added terms or conditions may result in disqualification of a bid, e.g., bids subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.***
- O. **Addendums:** Should an addition or correction become necessary after a solicitation is issued, an addendum relating the necessary information will be mailed to all bidders on record with the TBPC as having been mailed a copy of the initial solicitation. When an addendum is issued, a notice of the addendum will be posted on the Electronic State Business Daily (ESBD). Bidders are required to acknowledge the addendum by returning the addendum with the bid or by physically noting the change or addition on the bid document. It is the bidder's sole responsibility to be aware of all addendums issued. The only number to be used to fax an addendum is **(512) 463-1400**. The State is not responsible for addendums received late, illegible, incomplete, or otherwise non-responsive because of electronic equipment failure or operator error. Written confirmation is **NOT** required for faxed addendums.
- P. **Standard/Regulation Requirements for Items:** All items furnished shall meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratories, Inc. (UL), Factory Mutual Research Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- Q. **Special Discounts:** Bidders are encouraged to offer discounts for large one time order deliveries, educational purposes, etc. The conditions for earning the discount may be indicated by the item being bid or by submitting a separate page with the information. These discounts will not be considered in determining the low bid but will be included in any contract issued.
- R. **Bid Preparation Expense:** Any expense related to the submission of a bid is the sole responsibility of the bidder. The state will not reimburse bidders for any cost related to bid preparation or submission.

## V. **SUBMISSION OF BID:**

- A. **Bid Package:** Bids must be submitted on the TBPC solicitation form. Each bid must be placed in a separate, sealed envelope and be properly identified. Bids must be time stamped at the TBPC not later than the date and time specified for the bid opening. **Only the completed, signed solicitation signature pages, HUB Subcontracting Plan (HSP) when required, and those pages on which a bidder is submitting a bid need to be returned. Pages not containing bid prices or signatures should not be returned.**

Bids sent via the U. S. Postal Service are to be sent to the P. O. Box address on the front of the solicitation. Bids-hand delivered or sent by a delivery service require the street address. Note that the ZIP codes are different.



Mail Bids to:  
TEXAS BUILDING & PROCUREMENT COMMISSION  
P.O. Box 13047  
Austin, Texas 78711-3047  
Or **Hand Deliver** to:  
Room 100 (8:00 am - 5:00 pm)  
Or **Overnight/Express Mail** to:  
Room 174-A (TBPC Mailroom, N.E. Back Dock) (7:45 am - 4:45 pm)  
1711 San Jacinto Blvd,  
Austin, TX 78701

Price lists or catalogs should be included with the solicitation. If this is not possible, be certain that any price lists or catalogs submitted are properly identified. Any terms and conditions recorded in a price list or catalog will not be considered a part of a bid unless specifically identified by the bidder and referenced in writing on the bid solicitation document.

- B. **Faxed Bids:** **CAUTION** The State offers facsimile (FAX) service as a convenience only. The only number to be used to fax bids and addendums is **(512) 463-1400**. The State is not responsible for bids or addendums received late, illegible, incomplete, or otherwise non-responsive because of electronic equipment failure or operator error. Written confirmation is **NOT** required for faxed bids or addendums.
- C. **No Bids:** If not bidding, do not return bid form.
- D. **Public Bid Opening:** Because of the number of items included in most term contracts and the high number of bidders, only the names and addresses of bidders will be read at a public bid opening upon request. Approximately two weeks after bid opening, a copy of the bid tabulation is usually available for public review on the TBPC website at <http://www.tbpc.state.tx.us/ctabs/>. To purchase a copy of a tabulation, call (512) 463-3377.
- E. **Late Bids:** Late bids will **NOT** be considered under any circumstances and will be returned unopened.
- F. **Amending/Withdrawing Bid:** A bid response cannot be altered or amended after the bid opening date and time. Any alterations made before the opening date and time should be initialed by the bidder or the bidder's authorized agent identified in the bid response. No bid response can be withdrawn after the opening date and time without approval of the TBPC. All approvals shall be based upon an acceptable written reason for the action.

## **VI. BID EVALUATION AND AWARD:**

### **A. Bid Evaluation:**

1. The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interests of the State, to reject any and all bid items in the sole discretion of the State, waive minor technicalities, and make an award in the best interest of the State.
  2. The TBPC shall be sole judge of "the best interest of the State."
  3. A response to a solicitation is an offer to contract with the State based upon the terms, conditions and specifications contained in the solicitation.
  4. Bids do not become contracts until, and unless, the TBPC issues a signed Notice of Award (NOA).
  5. The contract shall be governed, construed and interpreted under the laws of the state of Texas as the same may be amended from time to time. Any legal action must be filed in Travis County, Texas.
  6. The State will not be bound by any communication with bidders other than the solicitation, these "General Instructions, Terms and Conditions," any written addendum's issued by the TBPC, Commission Rules, and State Law.
  7. The factors listed in Texas Government Code, Title 10, Subtitle D, Sections 2155.074, 2155.144, 2156.007, and 2157.003 shall be considered in making an award.
- B. **Tie Bids:** In case of tie bids, the award will be made in accordance with Rule 1 TAC Section 113.6(b)(3) and 113.8 (preferences). Consistent and continued tie bidding could cause rejection of the bids by the TBPC and/or investigation for antitrust violations.
  - C. **Notice of Award (NOA):** The successful bidder(s) will be notified of the acceptance of their bid by TBPC's issuance of a signed NOA. The bidder must advise the TBPC within 10 working days from the date of the NOA of any errors requiring correction.
  - D. **Qualified Ordering Entity List:** A directory of state agencies and other qualified ordering entities is available on website. State Agencies (<http://esbd.tbpc.state.tx.us/agaddress/addresslist.cfm>) and

Coop (<http://www.tbpc.state.tx.us/stpurch/coopmemb.html>)

- E. **Performance Bond:** When a performance bond is required, the amounts shall be as follows unless otherwise stated in the solicitation:

For total awards of up to \$100,000 no bond required.

\$100,000 to \$250,000 a bond for \$25,000

\$250,000 to \$500,000 a bond for \$50,000

Over \$500,000 a bond for \$50,000 plus 5% of the amount over \$500,000 rounded to the next \$1000

1. Any required bond (s) must be filed with the TBPC within 30 days from the date of the NOA.
2. The only forms of surety acceptable as a performance bond are:

- Cashier's Check
- Certified Check
- Irrevocable Letter of Credit issued by a financial institution subject to the laws of Texas.
- Surety or Blanket Bond from a company chartered or authorized to do business in Texas.
- United States Treasury Bond.
- Certificate of Deposit

**Note: Bonds completed (signed) by an out-of-Texas surety require a counter signature and seven digit license number by a Texas resident agent of a company chartered or authorized to do business in Texas or a copy of reciprocal agreement between states.**

3. A separate performance bond **MUST** be provided for each contract awarded and must reference the contract number(s) for which the bond is provided (except as noted in Texas Administrative Code 113.2(12) - Blanket Bond).
4. Supplemental advertisements and awards made on an existing contract class will require bonding in an amount consistent with the schedule above. All references to the bond by vendor and/or surety companies must reference the contract number in lieu of or in addition to the bonding company's number, and the effective dates of the contract.
5. Bonds and other forms of surety must be made payable to the TBPC.

## **VII. INVOICING:**

Invoices (2 copies) must be submitted in duplicate to the receiving entity in compliance with the following procedure:

- A. Mail or provided to invoice address listed on purchase order.
- B. The invoice must show name of vendor exactly as shown on the purchase order, the Texas Identification Number System (T.I.N.S.), and the correct "Remit to:" address.
- C. Invoice must show name of ordering entity.
- D. Invoice must show requisition number and order number. Some contracts are awarded with blanket TBPC numbers and do not require that the orders issued by qualified ordering entities be processed through the TBPC prior to being sent to the vendor. Invoices for this type contract must show the blanket term contract purchase order number and the qualified ordering entity requisition number supplied by the qualified ordering entity.
- E. Invoice should include a description of each item. Items should be shown in numerical order as shown on the purchase order.
- F. Quantity, unit and price of each item must be shown as on purchase order. All unit prices should be extended on the invoice.
- G. Total all extensions on the invoice.
- H. Discount, if applicable, must be stated, extended and deducted to arrive at a NET TOTAL for the invoice unless line item discount percentages vary.
- I. Shipment date of merchandise must be shown.
- J. Date of purchase order must be shown.

## **VIII. PAYMENT:**

- A. Payments shall be made in accordance with the Prompt Payment Act provided in Texas Government Code, Title 10, Subtitle D, Section 2251. State agencies spending appropriated funds are required by state law to pay properly submitted invoices within thirty days or a late payment fee of 1% will automatically be added by the Comptroller as established by law.

- B. Payments for merchandise purchased with State appropriated funds will be made through State warrants issued by the Comptroller of Public Accounts. Payments by qualified ordering entities will be made through the entity's local payment system. In accordance with Texas Government Code, Title 10, Subtitle D, Section 2251, a political subdivision whose governing body meets only once a month or less frequently is required to pay properly submitted invoices within 46 days or a late payment fee of 1% will automatically be added by the Comptroller as established by law.

A payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

- (1) the date the governmental entity receives the goods under the contract;
- (2) the date the performance of the service under the contract is completed; or
- (3) the date the governmental entity receives an invoice for the goods or service.

- C. Partial payments are an exception, but may be made with the prior written approval of the paying entity.
- D. Electronic payment may be available through some ordering entities.
- E. If a blanket purchase order extends beyond a State biennial appropriation period, payments for consumable merchandise delivered after the end of the State biennium are contingent upon the continued availability of appropriations to make such payments.

## **IX. CANCELLATION:**

- A. **Cancellation of Contract Orders:** Orders are canceled in writing by the qualified ordering entity or the TBPC. Orders may be canceled without the consent of the vendor for failure to meet contractual obligations. If cancellation is requested by a qualified ordering entity for some other reason, through no fault of the vendor, the vendor's permission to cancel is required. All correspondence from the vendor pertaining to the cancellation of a term contract purchase order is to be addressed to the qualified ordering entity with a copy to the TBPC.
- B. **Restocking Fee:** An ordering entity may request that a vendor accept return of merchandise already delivered or that a vendor cancel an order prior to delivery. If the return or cancellation is required through no fault of the vendor, the vendor may request a reasonable restocking charge or cancellation fee.

An ordering entity may pay a restocking charge, cancellation fee, or other similar charge if the commission or ordering entity determines that the charge is justifiable. As a guideline, restocking charges of **15%** or less (plus freight) of the original cost of the materials are generally considered reasonable. Charges exceeding this guideline may require additional justification.

Less than 15% - The ordering entity can process payment without TBPC approval.

Greater than 15% - TBPC purchaser approval required.

### **Overshipments**

Ordering entities are not under any obligation to accept overshipments that are not within terms and conditions of the contract. In some industries (such as printing), it is customary and it may be in an ordering entity's best interest to accept the overshipment.

### **Shipments from Canceled Orders**

Ordering entities are not under any obligation to accept shipments from properly canceled orders. If it is in the ordering entity's best interest to accept the shipment however, the order should be reinstated. If the ordering entity does not need the shipment, the vendor will be notified and the shipment handled in the same manner as any item received but not ordered.

- C. **Authorized Relief from Performance (Force Majeure):** The State will grant relief, as necessary, from performance of the contract if vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor. The burden of proof for the need of such relief rests with the vendor. To obtain release based on Force Majeure, the vendor must provide the TBPC with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.
- D. **Cancellation of Contract:** Upon written notice to the vendor, the TBPC reserves the exclusive right to cancel a contract either in whole or in part for convenience without damage or liability **to the state**. Abandonment of a contract by a vendor for whatever reason without notification and approval of TBPC subjects the vendor to damages and all legal remedies available to the State.

## **X. OTHER PROVISIONS:**

### **A. Subcontracting Program (HUBs) - Good Faith Effort:**

State agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State, see Tex. Gov't. Code Ann. Title 10, Subtitle D, Chapter 2161. The goal of this program is to promote fair and competitive business opportunities for all businesses contracting with the State of Texas.

A list of all TBPC certified HUBs may be electronically accessed through the Internet from TBPC's home page at

<http://www.tbpc.state.tx.us>.

### **B. Cooperative Purchasing Program:** State statutes provide for local governments, school districts, special districts, and certain non-profit entities to make purchases through State contracts. Any contract issued by the TBPC is subject to purchases by these entities unless a specific exclusion is made in the special instructions for a contract. Only contract purchase orders issued by the TBPC or orders issued through a TBPC contract are eligible for contract pricing.

### **C. Recycled Products: Definitions:**

1. **Environmentally Sensitive (or Environmentally Preferable) Products:** Products that protect or enhance the environment, or that damage the environment less than traditionally available products.
2. **Pre-consumer Materials:** Materials or by-products that have not reached a business entity or consumer for an intended end use including industrial scrap material and overstock, or obsolete inventories from distributors, wholesalers and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.
3. **Post-consumer Materials:** Finished products, packages or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.
4. **Recycled Material Content:** The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.
5. **Recycled Materials:** Materials, goods or products that contain recyclable materials, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.
6. **Recycled Product:** A product, including recycled steel, that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality (TCEQ) in consultation with the TBPC. The product must be clearly identified as recycled by packaging, markings, literature, etc.
7. **Remanufactured Product:** A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

**NOTE:** Texas state law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product bid on this solicitation contains recycled material, please identify the item number and report the percent of **recycled material content** in the product **and** the percent of **post-consumer material** (as these terms are defined above) used in the product. In addition, identify any products that meet the criteria of "Environmentally Sensitive."

Information Request: Please send information on any products not listed in this contract that are related and available through your company which contain recycled material along with the percent of post- and pre-consumer content to: Texas Building and Procurement Commission, Procurement Division, Recycled Products Coordinator, Box 13047, Austin, TX 78711-3047.

When bidding, please consider the following:

**Packing & Packaging:** Use of the minimum amount of packing and packaging material consistent with assuring no damage to product in transit. The use of recyclable and recycled material content packing and packaging material is preferred. For quantities requiring palletized shipping, the State prefers pallets to be

constructed of 100% post-consumer plastic lumber or corrugated board with a minimum of 40% post-consumer content.

**New or Unused:** The term shall not be interpreted to exclude the use of recycled content materials in products supplied. Nothing in a solicitation shall be construed to preclude the use of recycled content materials in a product regardless of any referenced specifications such as ANSI, ASTM, or Federal specifications so long as the material meets the performance requirements of such specifications and all required laws and regulations.

- D. **Material Safety Data Sheets:** A vendor must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement.
- E. **Advertisement:** Vendors are prohibited from using contract award information, sales values or volumes and/or state of Texas customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from the Texas Building and Procurement Commission, Procurement Division.
- F. **Dispute Resolution:** The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used by the TBPC and the contractor to attempt to resolve all disputes arising under this contract.
- G. **Commodity Code Conversion:** In order to facilitate the TBPC's conversion to the NIGP commodity codes, the commodity code numbers for items on the contract resulting from this solicitation may change prior to award or at some point during the term of the contract. The specification, price, and other terms of the contract will remain the same.
- H. **Assignment:** Any contract resulting from this solicitation may not be assigned, sold, or transferred without the express written consent of the TBPC. An attempted assignment after the event of contract award without TBPC approval will constitute a material breach of contract.
- I. **Bankruptcy or Buy Out:** In the event a contractor enters into bankruptcy or buy out proceedings, the contractor must provide written notice of the proceedings to TBPC. The written notice must be received by TBPC within 30 days of the buy out or bankruptcy filing. Any contract resulting from this solicitation may not be assigned, sold, or transferred without the expressed written consent of TBPC.